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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,256	12/07/2000	Peter Leslie Hart	BKR-21102/01	5947

7590 04/02/2004

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EXAMINER
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ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/719,256

Applicant(s)

HART, PETER LESLIE

Examiner

Raymond W. Addie

Art Unit

3671

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2,4,6,7 and 16-21.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: Response to Applicant's arguments is enclosed

***Response to Arguments***

1. Applicant's arguments filed 2/20/2004 have been fully considered but they are not persuasive.

Applicant argues "as acknowledged by the Patent Examiner...there is absolutely no teaching in the Barth et al. '698 patent of providing a paving block having the upper tapered portion of the lateral side intersecting the lower planar portion at an angle in the range of greater than  $0^{\circ}$  up to  $150^{\circ}$ ...as such the Patent Examiner's rejection of claims 20 and 21 under 35 U.S.C. 102 is clearly in error...the Patent Examiner's rejection of Claims 20 and 21 as unpatentable under 35 U.S.C. 103 is likewise in error.

The Applicant supports the argument by suggesting "there must be motivation within the four corners of the Barth et al. '698 patent in order to modify the Barth et al. '698 patent".

However, the Examiner does not concur.

As clearly cited in the Last Office Action, Col. 3, Ins. 36-48 of the Barth et al. '698 patent positively recites "The upper edge of the sides (4) of the stones (2) may optionally include a bevel (22), this being used for both functional and aesthetic reasons...This bevel aids in directing water from the top surface (6) of the stones (2) to the recesses 10, thereby allowing for quicker drying of the paved surface".

Further, Barth et al. discloses in col. 3, Ins. 2-5 "In this manner, the drainage of large quantities of surface water is also ensured without disturbing the appearance of a closed surface...In addition, this leads to an emphasis on the visual impression of a desired contour line for the sides of the stones".

Hence, it would inherent that Barth et al. contemplates and provides for a peripheral bevel (22) having a contour offset by 1-15° in order to form a drainage cavity to address water drainage issues as well as aesthetic reasons.

Applicant further argues "A still further advantage of Applicant's invention as it is positively defined in Claims 20 and 21 is that the gap between the upper edges of adjacent blocks is very small due to the relatively small angle of intersection between the upper tapered planar portion and the lower planar portion of each side of the paving block...As such small items, such as the heel of a woman's high heeled shoe, cannot enter into the space between adjacent paving blocks...The gap is simply too small".

However, the argument put forth above is not supported by the claims nor the specification.

Rather the suggestion of making an opening, groove or aperture small enough such that "stiletto heels no longer run the risk of sinking in and getting stuck" **is positively recited by the prior art in col. 2, ln.64-col. 3, ln. 6 reference to Barth et al. '698;** and is not found in the instant application.

Therefore, the argument is not persuasive and the rejection is upheld.

Applicant further argues "Although the Patent Examiner has not relied upon any secondary reference in combination with the Barth et al. '698 patent in his rejection of claims 20 and 21, absolutely none of the other prior art references cited by the Patent Examiner during the lengthy prosecution of this case disclose Applicant's positively claimed feature of intersecting the upper tapered portion of each lateral side with the lower planar portion at an angle in the range of greater than  $0^{\circ}$  up to a maximum of  $15^{\circ}$ . Specifically, this feature is clearly not shown in U.S. Patent No. 5,051,023 to Yoshida et al. previously relied upon by the Patent Examiner in his rejection of the claims. Instead, the Yoshida et al. second surface 2 appears to intersect the lower surface at an angle of  $90^{\circ}$ , not in the range of greater than  $0^{\circ}$  up to a maximum of  $15^{\circ}$ . The same is also true for U.S. Patent No. 5,727,762 to Landers previously relied upon by the Patent Examiner in his rejection of the claims. Instead, Landers merely discloses a single planar surface for the side surfaces. In the event that the upper tapered surface of Landers is interpreted as the second tapered surface, the intersection between these two surfaces appears to be in the range of greater than  $75^{\circ}$ , not in the range of greater than  $0^{\circ}$  up to a maximum of  $15^{\circ}$ .

However, neither reference to Yoshida nor Landers is put forth in the Last Office Action. The only references put forth in a rejection in the Last Office Action are Barth et al. '698; Ballard 126,171; Ludvisgen 3,722, 162. To which the Applicant has made no specific argument to the secondary references. Therefore, the arguments are moot.

The Applicant further states "Likewise, the secondary references relied upon in combination with the Barth et al. '698 patent by the Patent Examiner in his most recent Office Action with respect to the rejection of some of the dependent claims clearly do not disclose this feature of Applicant's invention.

All of this, furthermore, was discussed in great detail at the interview held at the Patent Office on October 8, 2003. At that time, according to the interview summary, the Patent Examiner indicated that 'The proposed amendment appears to overcome the cited art of record, if filed formally.'" Applicant acknowledges that the new claims 20 and 21 filed in Applicant's most recent amendment do not correspond exactly to the claims discussed at the interview. However, the only differences between new claims 20 and 21 and the claims discussed at the interview relate to the water channels, which everyone agreed at the interview was a feature disclosed in the prior art. As such, the deletion of some of the features relating to the water channels from claims 20 and 21 from those discussed at the interview has absolutely no bearing upon the patentability of claims 20 and 21".

However, as admitted by the Applicant, the proposed amendment to Claim 20 is not identical to what was presented in the interview; to include that Claim 21 was never put forth nor discussed during the interview.

Hence the argument is not persuasive and the rejection is upheld.

In closing, Applicant acknowledges that the paving block disclosed in this application does not constitute a pioneer" invention. There are many prior art paving blocks and the most pertinent of these prior art paving blocks appear to have been cited by the Patent Examiner during the prosecution of this case. However, Applicant does not claim to have invented a paving block" but rather only the paving block that is specifically defined in claims 20 and 21 as well as the dependent claims. That specific paving block achieves several advantages not achieved by the prior art paving blocks and clearly differs in construction as claimed from the prior art paving blocks.


For all the foregoing reasons, Applicant respectfully submits that claims 20 and 21, together with all of their dependent claims, patentably define Applicant's invention over the prior art references of record and are, therefore, allowable.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**RWA**  
**3/26/2004**